

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1799 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THAKORE SITAJI MOHANJI

Versus

DIST.REGISTRAR CO OP.SOCIETIES& DY.DIRECTOR

Appearance:

MR MUKESH R SHAH for Petitioners
SERVED BY DS for Respondent No. 1
MR KS JHAVERI for Respondent No. 2
MR PK JANI for Respondent No. 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/03/96

ORAL JUDGEMENT

1. This petition concerns the election of Chairman and Vice Chairman of Agricultural Produce Market Committee, Patan (hereinafter referred to as 'the Market Committee'). Elections of the Market Committee in terms of Section 11 were held on 4.1.1994. Petitioners and respondents Nos. 3 to 8 were declared elected as

agriculturist members of the Managing Committee of the Society. So also the elections of four members represented by the traders holding general licences and two members of the Cooperative Market Society situated in the market area holding general licences. After elections of all the three categories of members were complete a meeting of the newly constituted market committee was held on 15.2.1994 to elect Chairman and Vice Chairman and accordingly Chairman and Vice Chairman were elected. On expiry of two years which is term prescribed under the statute for the office of Chairman and Vice Chairman, the election of new Chairman and Vice Chairman were sought to be held on 8.3.1996 as per the agenda of meeting issued on 27.2.1996. The holding of elections of Chairman and Vice Chairman on the expiry of the term of previous Chairman and Vice Chairman is challenged in this Special Civil Application.

2. It is the contention of the learned counsel for the petitioner that since the constitution of the Market Committee as per the election held on 4.1.1994 and election of Chairman and Vice Chairman on 15.2.1994, elections of all members representing agriculturists in terms of Section 11(2) have been set aside by the Director of Election, dispute having been raised for the reason that there was illegality in issuing voters list. The order of the Director setting aside the elections of all the agriculturist members to the society was upheld by the State Government on revision. Special Civil Application No. 10720 of 1995 had been preferred by such unseated candidates before this court in which while issuing Rule, following interim order has been made:

"Therefore, the interim relief staying operation of the impugned orders to enable the petitioners to function is refused. Interim relief is granted only to the extent of staying the process of fresh election pursuant to the impugned orders."

3. In these circumstances, learned counsel for the petitioners contends that as the agriculturists constituency is not at all represented, there is no properly constituted marketing committee which could hold elections of its Chairman and Vice Chairman. The ancillary contention of the learned counsel for the petitioners is that if the Chairman and Vice Chairman of the Committee are allowed to be elected by the remaining members of the society, it would mean that the newly elected Chairman and Vice Chairman would continue to hold the office for two years, against which eight

agriculturist members, if their Special Civil Application No.10720 of 1995 succeed, will have no opportunity to field their candidate for the two offices notwithstanding they constituting a majority. It is also urged that there is no provision that once election of Chairman and Vice Chairman has taken place he could be removed by the majority of the members before the completion of the term.

4. Mr. P.K.Jani, learned counsel for respondent No.1 urged that merely by setting aside the election of one or more members of one or more constituencies does not result in nullifying the constitution of market committee pursuant to elections which had taken place. It merely amounts to cessation of holding of office by the members whose elections have been upset and a vacancy is caused in the constitution of the committee which could be filled in by holding bye elections in terms of Section 11. But a properly constituted Agricultural Produce Market Committee continues to remain in existence notwithstanding such vacancies and so the other members for the time being are entitled to and are responsible for working as Market Committee and discharge all obligations under the statute as are required thereunder which including holding of elections of Chairman and Vice Chairman on the expiry of term of present Chairman and Vice Chairman.

5. Mr. Zaveri, learned counsel for respondent No.2 market committee supports the contention of Mr. Jani.

6. I have carefully considered the rival contentions.

7. Section 11 of the Gujarat Agricultural Produce Act, 1963 (hereinafter called the Act) provides for the constitution of market committee which requires that every market committee shall consist of eight agriculturist who shall be elected by members of the Managing Committees of Cooperative Societies dispensing agricultural credit in the market area, four members to be elected by the traders holding general licence and two representatives of the cooperative marketing society situated in the market area and holding general licence to be elected from amongst the members of such societies by the members of the managing committees of such societies. Apart from these three types of elected members it also postulates nominated members, one by the local authority within whose jurisdiction market yard is situated and two members by the State Government. After the elections are held and the new market committee is

constituted the Director or any person authorised by him is required to call a meeting of such market committee to elect Chairman and Vice Chairman from amongst its members of the class specified in para (i), (ii), and (iii) of subsection (1) of Section 11, namely, agriculturists, traders and the members representing cooperative societies of the market area. Under Rule 33 any person elected as Chairman or Vice Chairman is to hold office for two years from the date of his election as Chairman or Vice Chairman as the case may be. Under Section 15 if at any time any vacancy occurs for any reason in a market committee and remains unfilled it shall be filled within such period and in such manner as may be prescribed by the election or nomination as the case may be of a member thereto. The member so elected or nominated is entitled to hold office only as a member in whose place he is elected or nominated for the remainder of the period held by such member. Section 16 provides no act or proceedings of market committee shall be questioned on the ground of existence of any vacancy or defect in the constitution of the market committee. Rule 22 provides that the procedure for holding a bye election under Section 15 for filling any vacancy shall be the same as that of a general election.

8. A brief view of the provisions referred to above makes it clear that once elections take place a duly constituted market committee comes into existence. Thereafter if election of any one or more members is set aside for any reason it results in vacancy in the market committee but does not affect the constitution of market committee itself. Setting aside of election of one or more person has to be distinguished from the holding of elections as a whole to be invalid resulting into a situation as if no elections have been held. So long that effect is not brought about once a properly constituted market committee comes into existence as a result of elections, the subsequent vacancies arising on account of upsetting of the result or for any other reason whatsoever does not result in rendering the constitution of market committee itself non-existent. Section 16 makes it abundantly clear that the existence of any vacancy or defect in the constitution of the market committee, as contradistinguished from non-existence of a duly constituted market committee, does not affect the legality or validity of the proceedings of the market committee on that account alone.

9. In view of the aforesaid, if we look at the facts of the present case, the elections of the petitioners as well as respondents Nos. 3 to 8 representing class of

persons mentioned in para (i) along with persons representing class of persons referred to in para (ii) and (iii) of Section 11(1) came to be held on 4.1.1994. The persons representing all the constituencies formed into a properly constituted market committee meeting of which was held on 15.2.1994 to elect Chairman and Vice Chairman in terms of Rule 31. Chairman and Vice Chairman were elected. It is not the case of any one that the meeting held on 15.2.1994 cannot be considered a meeting of the committee at all nor is it the case of the petitioner that it cannot be considered as legitimate outcome of that meeting. So the election of Chairman and Vice Chairman, once it is held that a properly constituted Market Committee existed, held its meeting and discharged functions of the Market Committee, it must necessarily follow that setting aside of elections of eight persons resulted in causing vacancy albeit only, of one set of constituency in the Market Committee, which required to be filled in terms of Section 15. As has been noticed above, as a result of interim order obtained by petitions in Special Civil Application No.10720 of 1995, fresh elections to fill vacancies caused by setting aside their elections have been stayed. Therefore, notwithstanding continuing vacancies a market committee consisting of the remaining members continued to exist and they are under an obligation to act as market committee in order to discharge their duties giving effect to various provisions of the Act and the rules made thereunder. That obligation includes election of Chairman and Vice Chairman on completion of the terms of the existing Chairman and Vice Chairman which is a mandatory requirement. The fact that vacancy continues to exist for one reason or the other cannot be a ground for withholding holding of meetings for such elections.

It may be pertinent to notice here a decision of this Court in the case of Kantilal Rajharam Thakkar v. Director of Agricultural Marketing and Rural Finance Gujarat and Anr. reported in 29(1) GLR 376. The issue had arisen on account of hiatus between the expiry of the term of the existing committee and holding of elections of new committee. Under the provisions of the Act, the term of an elected committee were to extend upto the time meeting of newly elected committee is held. The elections of Chairman and Vice Chairman of such committee which was deemed to continue until holding of the meeting by the newly elected committee is held was challenged inter alia on the ground that with extension of the term of elected committee, the term of Chairman and Vice Chairman to hold office for two years must also deemed to be extended. The Court while opining that the office

bearers have ceased to hold office, the moment the term of committee of which they were members expires, but held that -

"it was therefore necessary to hold fresh elections of Chairman and Vice Chairman. Election of committee was held on November 30, 1985, but it had not been reconstituted on account of the election disputes which was pending before various authorities. It is because the committee had not been reconstituted, that the committee of which the petitioner was a member continued to be in existence. If the committee continued to be in existence, there was no reason why it should not elect Chairman and Vice Chairman every two years, as provided in the Rules. On the reconstitution of the Committee, Rule 31 of the Rules would come into operation and election of the Chairman and Vice Chairman of the reconstituted committee would have to be held."

10. I am in respectful agreement.

11. The contention of the learned counsel for the respondent that if the new Chairman and Vice Chairman are elected, they cannot be unseated by the persons who may now be elected to fill in the vacancies of agriculturists on failure of petition or restoration of petitioner's membership in case Special Civil Application No.10720 of 1995 succeeds, would result in denial of the right of majority to elect Chairman. This argument suffers from patent fallacy. The election of Chairman or Vice Chairman is by the majority of the members present at the time when meeting is held. In cases of any vacancies which could be large in number, if the Chairman and Vice Chairman are elected by the majority of the persons constituting the market committee for the time being, the validity of such election is not affected on subsequent filling of the vacancies which might affect the constituent majority. Hence the contention that after filling the vacancies, the Chairman will not enjoy the confidence of majority or the persons filling the vacancy had no opportunity to exercise their right of franchise in the election of Chairman and Vice Chairman has no substance to restrain the market committee from electing Chairman and Vice Chairman in place of those whose terms have expired.

12. Whether in such cases the majority whose confidence Chairman does not enjoy can oust the Chairman or not is not the question required to be decided at the moment. The question required for consideration at

present is whether the members remaining after upsetting the elections of petitioners and respondent Nos. 3 to 8 could hold a valid meeting to elect Chairman and Vice Chairman. So long as the Market Committee is in existence, the existing members, in my opinion, have always right, irrespective of numbers in which they are, to discharge their obligations as are required of them under the Act. The protection to their acts has been declared under Section 16 which says in no unequivocal terms that whether there is a vacancy or whether there is a defect in the constitution of the committee, the action taken and proceedings held by the committee would not be affected, for that reason alone.

12. As a result, this petition fails. Notice discharged. Interim order vacated. Direct service permitted. No costs.

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